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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/033,090	10/25/2001	Michael S. Gatov	01-709	8506

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EXAMINER

BOLES, DEREK

ART UNIT

PAPER NUMBER

3749

DATE MAILED: 12/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

GA

Office Action Summary	Application No.		Applicant(s)	
	10/033,090		GATOV, MICHAEL S.	
	Examiner		Art Unit	
	Derek S. Boles		3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 August 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 October 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the cross-sectional area of the received initial flow of air into the plenum must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5, 8-11, 14-16, 19 and 21-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Horneff et al. (3,824,909). See fig. 1, **20** for the blower, **24** for the plenum and **26** for the air diffuser. Regarding claim 2, see col. 3, lines 45-47. Regarding claim 3, see col. 2, lines 29-32. Regarding claims 5 and 16, see col. 1 lines 36-48. Regarding claim 21, see abstract. Regarding claims 22-25, see *drawings*, above.

Regarding claims 4, 7, 9, 11, 19, 24 and 25, it has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Claim Rejections - 35 USC § 103

Art Unit: 3749

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shuler in view of Horneff et al. (3,824,909). Shuler discloses all of the limitations of the claim except for the range of airflow holes being between 0.125" and 0.5". Horneff et al. discloses the presence of a range of airflow holes being between 0.125" and 0.5". See col. 3, lines 36-53. Hence, one skilled in the art would find it obvious to modify the system of Shuler to include the range of airflow holes being between 0.125" and 0.5" of Horneff et al. for the purpose of slowing the airflow.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Horneff et al. in view of Gardner (5,263,290). Horneff et al. discloses all of the limitations of the claim except for the first side of the plate to experience a first pressure and the second side to experience a pressure lower than the first pressure when the plate is disposed in an airflow. Gardner discloses the presence of a first side of the plate to experience a first pressure and the second side to experience a pressure lower than the first pressure when the plate is disposed in an airflow. See col. 9, lines 26-31. Hence, one skilled in the art would find it obvious to modify the system of Horneff et al. to include the first side of the plate to experience a first pressure and the second side to experience a pressure lower than the first pressure when the plate is disposed in an airflow of Gardner for the purpose of adjusting airflow velocity.

Claim Rejections - 35 USC § 112

Art Unit: 3749

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4, 6, 7, 17 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 4, there is insufficient structure claimed to support the recited functional language "...air diffuser is capable of eliminating initial airflow turbulence ...". Regarding claims 6 and 17, there is insufficient structure claimed to support the recited functional language "...cross-sectional area varies...". Regarding claims 7 and 18, there is insufficient structure claimed to support the recited functional language "...capable of dissipating static charges...".


Response to Arguments

Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The provided references are representative of the state of the art that is applicable to the applicant's invention. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Derek S. Boles at (703) 308-1804 or fax number (703) 746-4569 or derek.boles@uspto.gov. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0861. The Supervisory Primary Examiner for Art Unit 3749 is Ira Lazarus who can be reached at (703) 308-1935 or at ira.lazarus@uspto.gov.

D.S.B.


DEREK S. BOLES
PATENT EXAMINER
GROUP 3700

11/26/02